IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.9 OF 2007

in

SUIT NO.2604 OF 2006

M/s Jyoti Builders Plaintiff

versus

Margdarshan Coop Hsg.Scty Ltd .. Defendants

Mr.Zai Andhyarujina i/b Mr.Raj Baid for Plff

Mr.Satish Nagvenkar for Defendants

CORAM : SMT ROSHAN DALVI, J

(Vacation Judge)

DATED: 5th January, 2007

P.C.

1. The plaintiffs apply for ad interim reliefs pending the Chamber Summons.

2. The Chamber Summons is for amendment of the plaint. It seeks to add further paragraphs in the plaint to show a novatio between the parties.

3. Initially, an undertaking was given not to create third party rights by the defendants. Thereafter, an application for ad interim reliefs came to be heard on merits. Ad interim reliefs were refused. An appeal therefrom came to be filed which came to be withdrawn with liberty to take out Chamber Summons for amendment of the plaint.

4. The suit is for specific performance of an agreement dated 18th March, 1994. The suit is filed in 2006. An application for interim relief made in such a suit is grossly delayed. After the ad interim application has been rejected on merits once, a further application for granting ad interim relief merely because Chamber Summons for amendment of the plaint is pending is an application totally lacking in bonafides. No such relief can be granted.

5. Application for ad interim relief is refused. However, the defendant's advocate upon taking

instructions from the Secretary of the society concedes that the amendment sought to be made in the plaint may be permitted though the averments sought to be made in the plaint, as shown in the amendment are denied. Both the Chamber Summons are therefore, made absolute in terms of prayer (a). The plaintiffs to carry out amendments within two weeks. No order as to costs. The defendants waive service. The plaintiff shall also amend the copy of the plaint served upon the defendants. The defendants shall be entitled to file a consolidated affidavit in reply to the Notice of Motion.

(Smt Roshan Dalvi,J)